IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1591 OF 1984
With
FIRST APPEAL NO. 1593 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
BHAVANISINGH AKHUBHA JHALA & ORS. - Respondent(s)

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Appearance :
Ms. Maya Desai for Appellant(s) in each appeal.
Shri Sunil L. Mehta & Shri Mehul S. Shah for Respondents-Claimants.
Shri Adil Mirza for Shri R. R. Marshall appears for driver, owner and Insurance Company of the truck.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/09/2007

COMMON ORAL JUDGMENT

The appellant-Gujarat State Road Transport Corporation,

being aggrieved by the award dated 16th March, 1984 passed by the learned Claims Tribunal (Main), Surendranagar in Claim Petition Nos.429 of 1982 and 411 of 1982, are before this Court with a submission that the learned Tribunal below erred in holding that the driver of the S.T. bus was driving the bus rashly and negligently and was the root cause of the accident. Basically, the dispute is between the owner of the S.T. bus and the owner, driver and Insurance Company of the offending truck. It is to be seen that Bhawanisingh Jhala, respondent No.1 in First Appeal No.1591 of 1984, has filed his Cross Objections for enhancement.

2. Ms. Maya Desai, learned Counsel for the appellant in each of the appeals, after taking me through the evidence and the findings recorded by the learned Tribunal below and statement of Bhawanisingh, submitted that the driver of the offending truck was 100% responsible and was the sole author of the accident. She also submitted that from the spot map/*panchnama* (Exh.33), it would clearly appear that the driver of the truck was unable to control the vehicle and had hit the bus with full force, as a result of which the driver side portion of the bus to the extent of third seat was scraped of and the bus even otherwise had suffered marks of the accident. She also submitted that if the bus was found at a distance of 660 ft. from the alleged spot, the same would not decide the negligence on the part of the driver of the bus because it has come on the

record that in the accident, the steering wheel of the bus suffered damage, got bent, as a result of which the driver was unable to control the bus. She also submitted that from the *panchnama*, it would also appear that the truck was in the center of the road and the bus driver tried to avert the accident.

3. Shri Adil Mirza, learned Counsel for the owner, driver and Insurance Company of the truck, submitted that from the *panchnama* of the spot, it would clearly appear that the truck was carrying some coal powder; after the accident, it had stopped at a distance of 25/30 ft. and it would also appear that the truck was on the side road, that is, road flank. After taking me through the evidence, he submitted that if the driver of the bus was driving at a moderate speed, then, the driver could stop the vehicle within a short distance. He also submitted that from the statement of Gopaldas, one of the inmates of the bus, it would clearly appear that the bus driver was driving the vehicle rashly and negligently.

4. Shri Sunil Mehta, learned Counsel for Bhawanisingh, who has filed the Cross Objections, submitted that the learned Tribunal below was unjustified in holding the permanent partial disability to the extent of 25% only, while from the evidence, it would appear that the claimant had suffered disability much beyond that.

5. From the *panchnama* - Exh.33, it does not appear that what was the real spot. The broken glass pieces were found all scattered, those were virtually covering the total width of the road. The coal powder was also found scattered on the road and the side flank. The part of the bus, which was scraped of in the accident, was also found at a long distance. True it is, that the bus was found at a distance of 660 ft. from the truck, but, it has also come on record that the steering wheel suffered damage, got bent and with the said steering wheel, no driver could control the vehicle or its direction. In the opinion of this Court, if the driver, after the bus met with the accident, could not control it, then, it was but natural because any driver after facing the accident would lose his senses for a short while, he may even remain stunned for few seconds or a flick of second, but, the impact and effect of the accident would always prevail upon the senses of the driver. In the present case, unfortunate for the bus driver was that the steering wheel suffered damage and he was unable to control the direction of the vehicle. In these circumstances, if the bus travelled the distance of 660 ft., it cannot be held that the driver of the bus was the sole author of the accident. The nature of the damage which the bus has suffered would clearly show that the truck had also hit the bus with great impact. If the bus had hit a static or standing article or object, then, certainly, it can be said that the bus, being in a great speed, had hit the static object, therefore, part of the bus was scraped of, but, in a case where there is impact with the truck, then, the speed of both the

offending vehicles would be reduced to some extent because the momentum with which the vehicles would collide would cause damage to each of the vehicles and would also reduce the speed of each of the vehicles.

6. In the present case, the damage which the truck has suffered would also show that the truck was also in a great speed. Out of the evidence of two inmates of the buses, namely, Bhawanisingh and Gopaldas, the statement of Bhawanisingh appears to be more natural, especially, when he says that both the vehicles, in the early hour of the day, were driven rashly and negligently. Taking into consideration the *panchnama* of the spot, statement of the witnesses and statements of the drivers of each bus, I hold that each of the drivers was rash and negligent and the liability would be 50% each, as each of them has equally contributed to the accident. The findings recorded by the learned Tribunal below that the driver of the bus was the sole author, deserve to be rewritten and I, accordingly, hold that the driver of each vehicles was rash and negligent and consequently, the owner of the truck and Insurance Company of the truck are liable to the extent of 50%. The liability would be shared equally by each of the driver, owner (and insurance company in case of the truck) equally.

7. So far as the Cross Objections are concerned, after going

through the evidence of the doctor and the certificate at Exh.28, which clearly provides that the permanent partial disability was to the extent of 25%, I am unable to hold that the learned Tribunal below was unjustified in holding the disability to be 25%. It was contended by Shri Mehta that the learned Tribunal below should have taken into consideration the future prospects of the claimant. Unfortunately, the claimant could not bring on record any evidence that within short future or during course of his tenure, he was likely to be promoted or he was likely to get better wages/salary. In absence of such evidence, it would not be possible for the Court to delve in the grey area and record a finding in favour of the claimant. The learned Tribunal below was absolutely justified in holding the monthly income to be Rs.980/- and was also justified in holding that the monthly loss was Rs.245/- only.

8. Though it was sought to be argued by the learned Counsel for the appellant that for a person aged about 42 years, the multiplier of 15 (fifteen) could not be applied, but, taking into consideration, that this appeal is being taken up for consideration almost after 23 years, and the accident had taken place somewhere in June-1982, I do not think that at this stage, this Court should interfere on the question of the multiplier. The Cross Objections are dismissed, but, however each of the appeals is partly allowed and it is held that the driver, owner and Insurance Company of the truck shall be liable to the extent of 50% with interest at

the rate, as awarded by the learned Tribunal below. If the appellants have already paid the amount, then, they would be entitled to recover the amount paid in excess of their liability from the driver, owner and Insurance Company of the truck and/or from the claimants. In case the amount is lying in some deposit, then, the appellants would be entitled to refund of 50% with interest earned on it, in view of its liability. It is further clarified that each of the claimants would be entitled to recover 50% of the amount with interest and proportionate costs from the driver, owner and Insurance Company of the truck, but, that would not denude the Corporation from exercising their rights to recover money from the claimants.

[R.S.Garg, J.]

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